

IN THE COURT OF APPEALS OF IOWA

No. 1-234 / 11-0259
Filed May 25, 2011

**IN THE INTEREST OF E.J.A. and E.L.A.,
Minor Children,**

S.E., Mother,
Appellant,

S.M.A., Father,
Appellant.

Appeal from the Iowa District Court for Madison County, Kevin Parker,
District Associate Judge.

A mother and father appeal the termination of their parental rights.

AFFIRMED.

Diana L. Rolands of Rolands Law Office, Osceola, for appellant mother.

Thomas G. Crabb, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Julie Forsyth, County Attorney, for appellee.

Jane E. Rosien, Winterset, attorney and guardian ad litem for minor
children.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

EISENHAUER, J.

A mother and father appeal the termination of their parental rights to their children. The mother contends the grounds for termination were not proved by clear and convincing evidence. She claims she should be granted additional time to reunify with the children. Both parents contend termination is not in the children's best interests. We review their claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The children first came to the attention of the Iowa Department of Human Services (DHS) in April 2008 following an incident of domestic violence in which the father struck the child and then the mother. He was arrested as a result of the incident. A second founded report of child abuse was made in January 2009 when the mother and her paramour were involved in a physical altercation in the children's presence. E.J.A. was injured during the altercation when she was hit by a phone thrown by the paramour. The mother sustained permanent nerve damage to her hand as a result of the altercation.

The children were removed from the home in July 2009 after the mother used a box cutter to cut her paramour, leaving a wound two inches deep and twelve inches long on his back. The children were nearby in a vehicle at the time the incident occurred. The mother pled guilty to assault while using or displaying a weapon. The children have remained in foster care since that time.

The children were adjudicated in need of assistance (CINA) on August 7, 2009. Throughout this case, the father has resided in Arizona and has had

minimal contacts with the DHS and the children. The mother was offered and received services to help her gain insight into her issues with domestic abuse and the impact it has on the children.

On December 11, 2010, the guardian ad litem filed a petition to terminate the mother and father's parental rights. Trial was held in January 2011, and on February 7, 2011, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (h), and (l) (2009), and terminating the father's parental rights pursuant to sections 232.116(1)(b), (e), (h), and (l). Both parents appeal.

The mother first contends the grounds for termination were not proved by clear and convincing evidence. The guardian ad litem and State¹ concede termination of the mother's parental rights under sections 232.116(1)(e) and (l) was improper. However, we need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Termination is appropriate under section 232.116(1)(d) where the following have occurred:

- (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
- (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

¹ The State has joined the guardian ad litem's response to the petitions on appeal filed by the parents.

The mother does not dispute the first element was proved. Instead, she contends there is insufficient proof the circumstances for the CINA continue to exist.

The children were adjudicated in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) because the parents could not keep the children safe from violence and trauma, which the children witnessed. The mother's dependency on men and her mental health issues were both concerns with regard to domestic abuse. The DHS worker testified the mother's reliance on the men in her life put her in the position of being controlled. At the time of termination, the mother was unable to demonstrate she could be independent either financially or emotionally; her current boyfriend was providing financial support to assist her with her bills and the mother's therapist testified the boyfriend was part of a support network the mother relied on.

The concerns about the mother's mental health continued to exist at the time of termination. The mother's therapist testified she had made significant progress into understanding the triggers for domestic abuse after being hospitalized in April 2010 for suicidal ideation following a fight with her paramour. However, the DHS worker testified the mother demonstrated little insight as to why the children were removed from her care, rolling her eyes at a meeting in September 2010 when the worker suggested the children were removed because of the mother's actions.

The evidence also shows the mother also allowed her boyfriend to have contact with the children despite the case plan directives against such contact

because of concerns regarding the detrimental affect it could have on the children. While both the mother and the boyfriend deny any contact occurred, the children's statements indicate otherwise. The children's therapist testified to numerous reports by the children of contact with the boyfriend:

[T]hey had indicated that [the boyfriend] was kissing their mom and tickling her and holding her down on the couch, and they said stop that, and he says no, it's because I love your mom, and they were talking about them kissing and talking about going to McDonald's and talking about going to Wal-Mart and [the boyfriend] being there and something about [him] teaching them to play guitar or something of that nature.

The trial judge also found the children had been exposed to the boyfriend.

There are three confirmed child abuse reports with regard to these children. Nine months after their removal, the mother was so distraught over a fight with her boyfriend she had to be hospitalized. The mother continues to be dependent on her relationships with men, even after receiving some individual therapy. She has not demonstrated insight into the events that led to the CINA adjudication, which puts the children at risk of exposure to continued harm if returned to the mother's care. The circumstances that led to the CINA adjudication continue to exist. Accordingly, we find the grounds for termination under section 232.116(1)(d) have been proved.

The mother also contends she should be granted additional time to reunify with the children. She argues she should be allowed an additional six months. The crucial days of childhood cannot be suspended while the mother experiments with ways to face up to her own problems. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). The children simply cannot wait for responsible

parenting. *Id.* At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d at 39.

Both the mother and father contend termination is not in the child's best interest. In determining best interests, the court considers the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *In re P.L.*, 778 N.W.2d at 37. We find termination is in the children's best interests. The mother has not shown the necessary insights or taken the necessary steps to protect her children. The children's bond with their mother is an unhealthy one, centered on the harm they suffered witnessing the domestic abuse they were exposed to. The children's therapist testified regarding this bond:

Well, one of the things I see going on is that the girls have a very strong need to be with Mom, but yet when they're with Mom, it's also almost as if they push themselves away by tantruming and having negative behaviors so while they want that and they seek that out, on the other hand, they don't feel comfortable with it so they act out

The DHS worker testified regarding the behaviors she observed during visitation with the mother:

The behaviors that I saw while they were with their mom, the girls cried a lot. They often cried while—during our visits. Jen Livingston describes that the girls often would tantrum. They would kick and bite [the mother] or cry. There was—there was a lot of chaos in their behavior.

A licensed daycare and respite care worker testified regarding her observations of the girls during and following visitation with the mother:

Well, the youngest one, E.J.A., she did a lot of whining and fussing when Mom was there and then she was fine when Mom wasn't there. E.L.A., she was always happy to see Mom, but she was never sad when she left. She was always kind of shy, quiet when Mom was around and then the behavior that I seen at E.L.A. really happened right after Mom left. She was very aggressive towards like the kittens and she wouldn't take directives well.

The mother also showed a willingness to put her relationship with her boyfriend ahead of her relationship with her children, choosing to spend time with him over the additional visitation she was offered with the children. The children have no bond with their father, who had little contact with them during the eighteen months this case was pending. He failed to participate in the services offered him.

Because the grounds for termination were proved and termination is in the children's best interests, we affirm.

AFFIRMED.